

**LFC Requester:****Jonas Armstrong****AGENCY BILL ANALYSIS  
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original**      X   **Amendment**            
**Correction**           **Substitute**          **Date** 01/25/16**Bill No:** SB 128**Sponsor:** Senator Benny Shendo Jr.**Agency Code:** 305**Short**    Interstate Compact for Forest**Person Writing**    Ismael L. Camacho**Title:**    Fires**Phone:** 575-526-2280 **Email** ICamacho@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Senate Bill 128 is proposed compact agreement between member's states of the United States Great Plains region.

Senate Bill 128, Article I, the purpose of the compact is to promote effective prevention and control of forest fires through the maintenance of adequate forest firefighting services and by providing for reciprocal aid in fighting forest fires.

Senate Bill 128 Article II makes the compact immediately operative upon the ratification by two or more member states.

Senate Bill 128 Article III contains the provisions of the Forest Plan. Subsection "a" permits the state forester, see NMSA 1978, § 68-2-5, to act as compact administrator of the state, to consult other like officials of other member states, and implement cooperation between the states in forest fire prevention and control. Also permits compact administrators to organize and coordinate their services, including the administrative integration to carry out the purpose of this compact.

Senate Bill 128 subsection "b" of Article III permits each member state to formulate and put in effect their own forest fire plan.

Senate Bill 128 Article IV, upon request from a state forest fire control agency of a member state, the state forest fire control agency may render all possible aid to the requesting agency of another state, including combating, controlling or preventing forest fires.

Senate Bill 128 Article V contains the provisions for reimbursement. Senate Bill 128 Article V subsection "a" appears to require the requesting member state who receives aid to reimburse the member state, who renders aid, for any loss or damage to, or expense incurred in the operation of, any equipment used in answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of employees and equipment incurred in connection with the request. Except that the rendering member state to donate the services without charge or cost to the receiving member state.

Senate Bill 128 Article V subsection "b" requires – the minimum legal requirements – the provision of workers compensation benefits to all employees and contract firefighters.

Senate Bill 128 Article V subsection “c” defines employee as: any volunteer or auxiliary legally included within the forest firefighting forces of the aiding state under the laws of the aiding state.

Senate Bill 128 Article V subsection “d” allows for the formulation of procedures for claims and reimbursement under the provisions of the member state’s laws.

Senate Bill 128 Article VI contain the compact’s effects and duties. Under subsection “a” the ratification of the compact is not intended to affect any existing statutes so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services or facilities of any member state.

Senate Bill 128 Article VI subsection “b” state the compact does not authorize or permit any member state to curtail or diminish its firefighting forces, equipment, services or facilities. It further provides that each member state shall maintain adequate forest firefighting forces and equipment to meet the demands for forest fire protection within its borders in the same manner and to the same extent as if the compact were not operative.

Senate Bill 128 Article VI subsection “c” states the compact does not limit or restrict the powers of the ratifying state to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulation in the aid of prevention, control and extinguishment of forest fires in the state.

Senate Bill 128 Article VI subsection “d” indicates this compact has no effect on existing or future cooperating relationship or arrangement between the United States forest service and a member state or states.

Senate Bill 128 Article VII allows representatives of the United States Forest service to attend meeting of the compact administrators.

Senate Bill 128 Article VIII states that Article IV and V are operative between the member states if the legislature of the other state has given its assent to the mutual aid provision of this compact.

Senate Bill 128 Article IX provides the compact remains in force and binding – for each member state that ratifies it – until the legislature or the governor takes action to withdraw from the compact. The action is not effective until after six months after notice of withdrawal and requires the chief executive give notice to all states then a party to the compact.

Senate Bill 128 Article IX section 2 is the emergency clause making the act effective immediately.

### **Synopsis:**

Senate Bill 128 is a proposed interstate compact between New Mexico and member states – including but not limited to – South Dakota, North Dakota, Wyoming, Colorado and any adjoining state (e.g. Montana, Nebraska, Kansas, Oklahoma, and Texas) for the purpose of

promoting effective prevention and control of forest fires in the great plains region through the maintenance of adequate forest firefighting services to include reciprocal aid in fighting forest fires.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

Although under the Forest Conservation Act, see NMSA 1978, § 68-2-6, “the division is designated as the agent of the state and is authorized to enter into contracts and cooperative agreements with . . . or other state, federal and private agencies or organizations to prevent and suppress forest fires, brush fires, grass fires or other wild fires, to do research, establish nurseries and furnish technical advice to the people of the state, and to do all other acts necessary to take advantage of, and carry out the provisions of the acts of congress hereinbefore set out, and all other acts of congress which are promulgated for forest conservation or rural fire defense purposes” the United States Constitution Article I, section 10 states that “[n]o state shall, without the consent of Congress, . . . enter into any agreement or compact with another state or with a foreign power.” T thus, it appears this compact may require congressional approval.

In addition, some of the member states may include Native American firefighter tribes that are part of the Bureau of Indian Affairs, e.g. the Northern Rockies 2015 Native American Crew Plain. This would also seem to require congressional approval as it may include a compact with the Bureau of Indian Affairs.

Senate Bill 128 Article II makes the compact operative immediately upon the ratification of two or more members which maybe contrary to Article I, section 10, of the United States Constitution –requiring Congressional approval.

Senate Bill 128 Article IV makes the compact a voluntary agreement between the member states; it states “the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.”

Senate Bill 128 Article IV includes the phrase “preventing forest fires” and such phrase is contained under the Forest Land Policy, See NMSA 1978, § 68-2-24. This public policy includes adopting forest practices that maintain and enhance such benefits and such resources, and to recognize varying forest resources by employing silvicultural planning including fire prevention which provides for the removal of trees in a manner that provides reasonable assurance for the natural or artificial regeneration of commercial trees species; provided, however, nothing in this section shall be in conflict with any law now in force.

Thus under the Compact Agreement created by Senate Bill 128 New Mexico may request aid, from member states, in the removal of trees.

Senate Bill 128 Article V subsection “a” may violate New Mexico’s anti-donation clause as it permits donating services to other member states. See New Mexico Constitution Article IX, section 14.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 128 Article VI appears to contain a conflict between subsections “a” and “b.” Subsection “a” permits the curtailment or diminution of the forest firefighting forces while subsection “b” requires the maintenance of an adequate forest firefighting forest protection plan.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS**

N/A